

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition
FACT, CONCLUSIONS RECOMMENDATION
of Benco Messenger Service, Inc.,
for Extension of Its Courier
Services Carrier Permit Authority
Between All Points in Minnesota

FINDINGS OF

AND MEMORANDUM

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge, on January 21 and 22, 1993, in South St. Paul, Minnesota. The hearing concluded on February 2, 1993, in Minneapolis.

Appearances: Appearing on behalf of Petitioner herein, Benco Messenger Service, Inc., was Curtis M. Wiseman, Balyk & Wiseman, Five East County Road B, Suite 5, St. Paul, Minnesota 55117. Appearing on behalf of Protestants herein, Action Messenger, Inc., Armstrong Couriers, Inc., MATS, Inc., Midwest Delivery, Inc., Quicksilver Express Courier Co., Rapid-Serv, Inc. and Roadrunner Transportation, Inc., was Samuel Rubenstein, Freight Transportation Consultants, Inc., P.O. Box 5, Minneapolis, Minnesota 55440.

The record in this matter closed on March 18, 1993, upon submission of Petitioner's posthearing brief.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the rules of practice of the Transportation Regulation Board and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final

determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final Order.

STATEMENT QF ISSUES

1. Whether Petitioner has demonstrated a need or statewide courier service?
2. Whether Protestants have demonstrated that they fully meet that need?
3. Whether the supporting shippers' desire to use Petitioner because of minority set-aside programs should be considered in resolving the issues of need and adequacy of existing service?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF_FACT

1. On July 10, 1992, Petitioner submitted a Petition to the Department of Transportation, seeking to extend its courier service carrier permit authority from the seven-county metropolitan area to the entire State of Minnesota.
2. The Board published notice of the Petition in its weekly calendar of July 24, 1992, and thereafter, setting a Protest date of August 13, 1992.
3. Timely Protests were filed by Spee-Dee Delivery Service, Inc., Action Messenger, Inc., Armstrong Couriers, Inc., Mallard Delivery Service, Inc., MATS, Inc., Midwest Delivery, Inc., Quicksilver Express Courier Co., Rapid-Serv, Inc., and Roadrunner Transportation, Inc.
4. On October 30, 1992, the Board issued a Notice of Hearing, setting the hearing for December 2 and 3, 1992, in South St. Paul. Due to a scheduling conflict, the hearing was reset to January 21 and 22, 1993.
5. Initially, Petitioner had sought unrestricted courier services carrier authority. Prior to the commencement of the hearing, however, the Petitioner amended the Petition, restricting the additional authority sought to "expedited delivery" as defined in Minn. Stat. 221.011, subd. 25 (1) (1993) and expressly excluding "overnight small package delivery" as defined in subdivision 25 (2) of that same statute. As a result of this amendment, Spee-Dee Delivery Service, Inc. withdrew as a Protestant.
6. At the commencement of the hearing, Mallard Delivery Service, Inc. also withdrew as a Protestant. Tr. 6.
7. At the hearing, Petitioner and Protestants stipulated that the Petitioner is fit and able to conduct the proposed operations and that Petitioner's vehicles meet the safety standards established by the Department of Transportation. Applicant Ex. 3; Tr. 9. Petitioner Benco Messenger

Service, Inc. is the successor to Benco Delivery Service, Inc. Both are wholly owned by Kurian Benjamin, who resides in Vadnais Heights, a suburb of St. Paul.

8. On January 17, 1990, the Board issued its Order approving the transfer of courier services carrier permit authority from American Eagle Express, Inc. to Benco Delivery Service, Inc. This authority authorized transportation of packages and articles less than 100 pounds in weight in vehicles with a registered gross vehicle weight and gross vehicle weight rating not exceeding 15,000 pounds, restricted to service to, from and between points located in the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, Benco was assigned Permit No. 64884. On June 21, 1991, the Board approved a corporate name change and change of address, so that the permit would be in the name of Benco Messenger Service, Inc. Applicant Ex. 1,

9. Petitioner currently has four employees. All of its vehicles are leased from owner/operators. Petitioner currently has 26 vehicles in operation, two of which are vans and 24 of which are sedans or pickups. Tr. 22-23.

10. For the year ended December 31, 1990, Petitioner had gross revenues of \$61,920, expenses of \$78,151, and a net loss of \$16,231. Applicant Ex. 4.

11. For the year ended December 31, 1991, Applicant had gross revenues of \$108,273, and expenses of \$121,678, resulting in a net loss of \$13,405. Applicant Ex. 5.

12. For the year ended December 31, 1992, Petitioner had gross revenues of approximately \$600,000, and a profit exceeding \$60,000, Tr. 26; Tr. 239.

13. Petitioner estimates that the rapid growth which it has enjoyed will continue, and that for calendar year 1993, it should have gross revenues of approximately \$1,000,000. If the statewide authority sought herein is granted, Petitioner estimates its gross revenues for 1993 will be about \$1.5 million. Tr. 26-27.

14. The owner of the Petitioner was born in the City of Kottayam, in Kerala State, located in southern India. Tr. 13. He is a full-blooded Asian/East Indian. Tr. 20. This has enabled Benco Messenger Service, Inc. to qualify as a participant in a variety of minority set-aside programs. The Minnesota Minority Purchasing Council, Inc. has certified Benco as minority-owned and managed, meeting the registration criteria established by the National Minority Supplier Development Council. Applicant Ex. 11 and 11A. The Minnesota Minority Purchasing Council is made up of some 82 major businesses, such as 3M, Control Data, Dayton Hudson, General Mills, and the State's Department of Administration, and Mn/DOT. It is the goal of the Minnesota Minority Purchasing Council to enable its members to meet their minority purchasing requirements by dealing with businesses which the council has certified as being minority-owned and operated.

15. The state's Department of Administration has certified Benco for

participation in the Minnesota Small Business Procurement Program. This certification applies to the state and its individual agencies, as well as the University of Minnesota and several metropolitan agencies. Applicant Ex. B. Benco has also been certified as a qualified minority business by the City of St. Paul and the County of Ramsey (Applicant Ex. 9), as well as Hennepin County (Applicant Ex. 10), FMC Corporation (Applicant Ex. 19), Ford Motor Company (Applicant Ex. 20), and the Piper Jaffray Companies (Applicant Ex. 21).

16. The purpose of these public and private certification programs is to help satisfy the variety of federal and state programs that require that private contractors set aside a certain portion of their business for various targeted contractors. The most common beneficiary of the programs is the minority-owned business.

17. There are only two other minority-owned businesses known to be operating as courier service carriers. One is AAA Delivery Service (CSC 64250), which is restricted to service between points in the seven-county metropolitan area. Applicant Ex. 15. The other is Bud-Jet Courier (CSC 64226) which is authorized to operate in the seven-county metropolitan area, as well as the cities of Buffalo, Elk River, St. Michael and Northfield. Applicant Ex. 17. No minority business enterprise holds statewide courier authority. Tr. 88.

18. Benco has provided metro-area service to the state's Department of Administration, the Department of Revenue, the Department of Health, and the Department of Public service. In each of these situations, certification as a minority business enterprise was a necessary condition for obtaining the service contract. Tr. 67; Tr. 237. Benco has also served IDS Financial Services and Honeywell Corporation under similar circumstances. Tr. 78,

19. Benco has installed a computerized order placing and tracking system which enables it to offer a number of services not available from other courier services. The software, known as microEXPRESS, combine routine accounting and recordkeeping with sophisticated dispatching functions. For example, a request for courier service can be entered by a dispatcher located at Benco's office, or it can be entered from a customer's premises using the customer's PC, a modem, and telephone lines. The same system allows the customer to check on the status of a delivery, check previous orders, deliveries and billing information. In addition, the software can automatically fax routine material to a customer, send orders to mobile data terminals in vehicles, and perform a number of other functions. Applicant Ex. 7 and 12. Benco has, in fact, placed three terminals with IDS Financial and Norwest Corporation to allow for customer order entry and order checking.

Supporting Shippers

20. Northern States Power Company has between 35 and 40 intracompany locations in the State to which it must ship documents and small parcels. These include the Shirko plant near Becker, Minnesota, Monticello, Winona, Faribault, Mankato, Red Wing, and Elk River. The various departments of the Company arrange their own courier service. The mail operations function of the Company supports the Petition of Benco. This portion of the Company makes between 20 and 30 outstate courier shipments per month. This is in addition to using two full-time persons to make daily runs along a regular route. Benco is currently used for the metro area courier work, and NSP is very satisfied with Benco, Tr. 125. Benco's minority status was a factor in its being chosen for the metro area work, but its prices and NSP's problems with other couriers were also factors in switching to Benco. Tr. 128. NSP used Courier Dispatch to deliver certain top priority budget reports to the Shirko

plant in Becker. Once, however, Courier Dispatch did not deliver the package properly and failed to get a signature for the delivery, with the result that the delivery could not be traced. Tr. 130. Following that experience, NSP

uses a company employee from Minneapolis to take the budget reports to Shirko,
or it has someone drive down from Shirko and pick them up in Minneapolis, and
take them back. Tr. 130.

21. Arden Fasteners is a distributor of rivets, velcro, and other fastening devices. Its primary customers are in the computer industry. It
uses Benco in the metro area, and would like to use it outstate as well. It
has customers in St. Peter, LeSueur, Rochester, Cannon Falls, Milaca, the
Fargo area, Grand Rapids, Worthington, Windom, Mountain Lake, and Roseau.
Tr. 103. Within the past 12 months, Arden has contacted Benco between eight
and nine times, asking Benco to take a package to one of these locations.
Benco has turned them down each time, because of a lack of authority.
Tr. 104, In some cases, Arden salesmen have personally delivered top priority
packages. Tr. 95. Arden would like to have Benco authorized to provide outstate service. Arden did not mention any need for a minority-owned
business to serve it. Instead, it is pleased with Benco's service in the
metro area, and would like to use it outstate as well. It has a minimum of 50
courier shipments per year to outstate Minnesota. Its experience in the past
year, however, is that many times the customer is unwilling to pay for an
expedited service, and is willing to settle for UPS Red Label, or other overnight service, Tr. 113-17.

22. Graybar Electric is a large national wholesale distributor of electrical products, principally for new construction. It handles such products as conduit, plugs, receptacles, fittings, and ballasts. Its national
sales exceeded \$2.0 billion in 1992. The Company has set-aside obligations.
Tr. 164. It is not aware of any minority business providing outstate courier
service. Tr. 165. Graybar maintains a warehouse in Minneapolis and has just
opened a satellite in Rochester. Graybar needs courier service for points
such as Red Wing, Faribault/Northfield, Rochester, St. Cloud and Hutchinson.
It would use Benco at least once a day from Rochester alone. Tr. 157. Graybar currently has a dedicated service contract with Benco, whereby seven
vans and seven drivers serve Graybar daily, from Minneapolis to various points
in the metro area. Graybar pays Benco by the hour, not by the mile.

Tr. 178. What Graybar would like to do is to extend the range of these metro-area drivers so that the driver assigned to the southeast metro region could serve Red Wing as well. Graybar believes this would be more efficient for it, and provide better service to its customers. Tr. 151; Tr. 157; Tr. 175. If the requested authority were granted, Graybar would use Benco exclusively, because of its quality of service, low rates, and minority ownership, Tr. 161. Graybar has used Quicksilver and Roadrunner to serve the outstate area for the past two years. It has used Quicksilver, Roadrunner, MATS, Midwest and Action in the past to serve the metro area. Benco has now taken over virtually all of Graybar's metro courier business. Tr. 185. Benco's metro area rates are cheaper than Roadrunner's, or anyone else that Graybar has used, Tr. 159.

23. Buerkle Buick-Honda operates a number of different businesses out of its Highway 61 location north of St. Paul. One of them is a wholesale parts jobber operation. Buerkle maintains an inventory of more than \$600,000 of parts for all GM, Honda and Acura automobiles. Buerkle ships parts to automobile repair facilities (both dealers and non-dealers) in Minnesota. Approximately 15 to 20% of its wholesale parts business is to destinations in outstate Minnesota. Most such shipments are carried by UPS or Spee-Dee in overnight service. The Company would, however, like to have courier service

available for deliveries outstate. Tr. 196. Currently, Buerkle uses private carriage when it is necessary to get a part to an outstate location sooner than overnight. Tr. 195. It would like to have a courier available, and estimates it would use a courier between one and three times per week to outstate locations. Tr. 197, Buerkle uses Benco exclusively for its metro area courier service, and is very pleased with the service provided. It used to use Rapid-Serv for inbound shipments, but encountered poor service late in the day, so it switched to Benco exclusively. Buerkle also uses two of its own vehicles to deliver parts to its wholesale customers in the metro area.

24. Kerr Transportation Services is a distributor of drug-testing materials, including drug-testing kits, forms, and manuals. It is located in Roseville, in the same building as Benco. Tr. 221. Kerr ships roughly 200 shipments per year to outstate Minnesota. Currently, all such shipments are sent in overnight freight by UPS. Kerr was unaware that expedited service was available outstate. Tr. 215. Kerr would like to use a courier for between 50 and 60 of those 200 shipments where same-day service is important to Kerr's customers. Kerr believes that the August 1, 1993 introduction of mandated testing for some of its intrastate customers will double or triple Kerr's business. It anticipates that the 50-60 shipments per year which require same-day service could increase to 150 per year by December of 1993. Tr. 226-27. Kerr uses Benco exclusively in the metro area. It is very pleased with its service and rates. Tr. 218. Kerr has used Roadrunner in the metro area prior to switching to Benco and has also used MATS for some overnight deliveries, It had no problem with MATS. Tr. 220. Kerr has had service problems with UPS and Greyhound. Tr. 224.

25. CP Rail Systems, which now includes the Soo Line, has 2500 employees in Minnesota at "hundreds" of facilities. CP Rail has a minority set-aside goal of 15% of its systemwide purchases of goods and services. Tr. 262. If it fails to meet that goal, there could be adverse consequences as a result of federal requirements. 49 C.F.R. pt. 23. Tr. 264. The Company has identified at least one employee to work in its Minority Business Enterprise Program. Tr. 260. He has been instructed to develop all areas of the Company's purchasing in order to meet the goal. In some areas, however, such as locomotive purchases, there are no minority business enterprises. In light of the large amounts of money spent in such areas, it is hard to meet the 15% overall goal. Therefore, in some areas, CP may do 40 to 50% of its purchasing from minority business enterprises. Tr. 280-81. There is no requirement that

the 15% be achieved in any one area, such as transportation or capital goods purchases. Instead, 15% is an overall goal. CP Rail would like to have both a minority-owned enterprise and a nonminority-owned enterprise available to it to provide courier service outside the metro area. Tr. 274-78. Since 1985, CP Rail has raised its percentage of purchases from minority-owned businesses from three percent to 15.0% in 1992. It is important to CP Rail to be able to meet or exceed the 15% goal. Because of the way that CP Rail is organized, the witness who testified could not give any details of the number of shipments that CP Rail would tender to Benco if it were authorized to provide courier service outstate. Tr. 287.

26. Global Computronics is an assembler and retailer of personal computers. It ships fully assembled PCs, as well as individual parts such as monitors, keyboard and drives. Global recently adopted a policy of sending all of its metro area assembled PCs by courier, rather than by UPS, because of UPS damage in the past. Tr. 306. It still uses UPS, however, for outstate

shipments because it was not aware of any reliable outstate courier. Global ships between 20 and 25 packages per year to Mankato, an equal number to Rochester, and ten shipments per year each to Alexandria and Duluth. Sometimes its customers are in such a rush that they will buy elsewhere if they cannot get immediate delivery. Global would like the ability to promise immediate delivery when that is important to the sale. Tr. 328. In the metro area, Global used Roadrunner and Rapid-Serv in the past. It now uses Benco exclusively in the metro area because of problems with late deliveries and cars that were too small to handle the load. Benco is used approximately eight to ten times per week in the metro area, both for fully assembled systems and rush-hour components, Tr. 316. Service has been exceptional. Currently, outstate customers either agree to wait for overnight service, or in a few cases, they drive to Global's facility to pick up the shipment themselves. For the most part, that pattern would continue, however, even if the authority requested were granted. Global believes that it would benefit from having same-day courier service available, and would like to use it in the future. The number of times such service would actually be used, however, is minimal, Tr, 340.

27. Rapid-Serv, CSC 42882, holds statewide courier authority. It will transport any package, except gold, silver or furs. It has between 60 and 65 vehicles available, 90% of which are owner/operated. Of these 60 to 65 owner/operator vehicles, 10 to 15 are automobiles, 30 to 35 are pickups or vans, 12 to 15 are straight trucks, and one is a tractor/trailer. The Company has two flatbed trailers available. All of its equipment is radio equipped and radio dispatched. Rapid-Serv has never refused a service request. It has three salesmen, and advertises in the yellow pages. It desires to receive and can accommodate more business. Rapid-Serv is not a minority-owned business. Tr. 382.

28. Quicksilver, CSC 48225, has statewide courier authority. It has available to it 170 vehicles, 15 of which are company-owned and 155 of which are owned by owner/operators. It has ten leased straight trucks available. All of its equipment is radio dispatched, and most of it has mobile data terminals. Quicksilver can accommodate more business. It does not turn down business, except in unsafe weather conditions, such as ice storms. It has several salesmen actively seeking additional business. Quicksilver is not a minority-owned enterprise.

29. Roadrunner, CSC 42842, holds statewide courier authority. It has 170 owner/operator vehicles available for expedited courier service, and additional company-owned vehicles available for overnight shipments. Of the expedited fleet, there are 27 straight trucks, 24 full-size pickups or vans, 30 automobiles, and 100 small pickups such as Mazdas or Mitsubishis. All of its equipment have two-way radios and mobile data terminals. The Company offers online tracking of orders for its customers. Roadrunner does not turn down service requests and desires additional business. It has four sales people and one sales manager, as well as a fulltime telemarketer actively seeking additional business. Tr. 397.

30. MATS, CSC 34410, has statewide courier authority. Its primary market niche is statewide overnight service. The Company does, however, allocate five drivers to provide expedited service, both in the metro area and

outstate. Three of these drivers start at 10:30 in the morning to take freight that has been picked up in the metro area earlier that morning and deliver it to places like St. Cloud, Mankato, Owatonna and Rochester. Tr. 421. The other two drivers do point-to-point expedited service, principally in the metro area. MATS does not turn down service requests and desires additional business. It has five sales representatives, and two officers who solicit business. MATS business grew rapidly during the first ten years of its existence, but in the last eight years its business growth has stopped. MATS attributes this to increased competition from new entrants, including "people in station wagons and other strange circumstances". Tr. 416.

31. Armstrong Couriers, CSC 40488, has statewide courier authority. It has 40 drivers and eight office employees. The Company operates 42 vehicles, including 37 or 38 three-quarter ton trucks, and five or six 18 to 22-foot dock trucks, Armstrong does not operate any autos. Armstrong does not refuse service requests and desires more business.

32. Action Messenger, CSC 43022, has statewide courier authority. It has 50 owner/operator vehicles, six company-owned cars, and two semitractor/trailers and five straight trucks. All of its equipment is radio dispatched and also carry pagers and portable telephones, Action employs 20 people fulltime. Action does not refuse business. It has two to three sales people who try to obtain additional accounts. Action has had very little growth in the past four years. Its revenues have been between 1.5 and 1.8 million for the last three years, The revenue figures are for all of its Minnesota intrastate business, courier, local cartage, contract and irregular route.

33. Midwest Delivery Service, Inc., CSC 55730, holds statewide courier authority. It has 11 fulltime driving employees, as well as 80 to 85 owner/operators. It owns eight to 12 vehicles, including vans, pickups and dock trucks. The owner/operators also provide vans and pickups. Midwest does not decline business, and seeks additional accounts. It has one sales representative and two officers attempting to obtain more business. It also advertises in the yellow pages and makes direct mail solicitations to businesses. Midwest does make expedited deliveries to Duluth, Rochester and

Mankato, and finds itself competing with illegal operators -- couriers who are supposed to be limited to the metro area but who are illegally carrying to outstate locations. Tr. 448.

34. There is no evidence in the record that Benco has carried any traffic beyond the territorial limits of its authority. On the contrary, Benco has refused to carry parcels outside of the seven-county area, even when requested to do so by substantial metro area customers.

35. None of the seven Protestants have minority business enterprise status or certification. Tr. 368-459. None of the seven protesting carriers demonstrated that they could help the shipping public meet minority business enterprise purchasing goals or requirements.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge,

3. From petitioner's experience, knowledge of the regulations and financial condition, the Judge concludes that it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

5. The ability to meet minority set-asides is a legitimate factor for the Board to consider in assessing public need for a petitioner's service and the ability of existing carriers to meet that need.

6. Petitioner has demonstrated a need for a courier service offering expedited deliveries on a statewide basis as regards shippers who have a requirement for providing a stated portion of their business to certified minority enterprises either under a government program or a voluntarily adopted company goal.

7. Existing carriers have failed to show that they can fully meet the demonstrated need.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

RECOMMENDATION

Based upon the foregoing Conclusions, the Administrative Law Judge recommends to the Board that it approve the Petition of Benco Messenger Service, Inc. for an extension of its courier services carrier permit to authorize the transport, on an expedited basis, of materials between all points in Minnesota, restricted against overnight small package delivery, if such additional authority is limited to customers who are subject to governmental minority business set-aside programs or who have voluntarily adopted similar policies in writing.

Dated this day of April, 1993.

BRUCE D. CAMPBELL
Administrative Law Judge

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NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The central question posed by this case is whether the Board should consider Petitioner's ability to meet shippers' minority set-aside goals in determining whether there is a need for additional statewide service and whether existing carriers can meet that need. The record indicates there are no existing couriers with statewide authority who are qualified as minority-owned businesses. For a shipper like Graybar Electric or CP Rail, Petitioner's ability to help them meet their goals is a factor in their choosing Benco for metro service, and was a factor in their support for Benco's expansion statewide.

Protestants point out that nowhere in Chapter 221 is there any reference to minority-owned businesses. Protestants argue that the entire hearing process is unnecessary if minority ownership results in an automatic grant of any request for authority. Petitioner, on the other hand, does not believe that this factor alone ought to result in an automatic grant of authority. Instead, Petitioner argues that it is only one of a number of factors which the Board may consider.

The Administrative Law Judge agrees with the Petitioner. The ability of a petitioner to assist shippers in meeting their minority set-aside goals or requirements is one factor for the Board to consider in determining whether or not there is a need for Petitioner's services and whether existing carriers can meet that need. The Board's predecessor, in 1978, considered a similar situation when it received an application for contract carrier permit authority from a minority-owned carrier who had been one of two low bidders for an NSP contract. Petitioner was owned and operated by a minority businessman, and was solicited to bid on the contract as part of a minority business placement program. NSP, though not under any federal mandate to do so, was voluntarily seeking to use competent minority businesses. In connection with a request for temporary contract authority, the Public Utilities Commission reasoned as follows:

The commission also cannot ignore that NSP has

established a corporate policy of providing equal opportunity to minority business enterprises. Its desire to do business with petitioner is a part of its effort to meet this commitment. The commission is not precluded from considering all legitimate needs expressed by the shipper in determining whether existing carriers can adequately meet those needs. Corporate programs which recognize past patterns of discrimination and which seek to provide equal opportunity express a legitimate business need, one which state policy recognizes and supports. The record before us contains no evidence that

doing business with existing carriers would enable petitioner to fulfill its commitment to providing equal opportunity.

In the matter of the Petition of Royal Limited Inc, Minnesota Public Service Commission, Docket No. CC 37194/A-78-1, Order, January 27, 1978, P. 3.

More recently, in 1992, this Board was faced with a similar situation when an applicant for a petroleum carrier certificate sought authority from the Board. In that case, the applicant was owned by a woman. The business was certified as a disadvantaged business enterprise pursuant to 49 C.F.R. Pt, 23. In that case, the Board held, in conclusion 8, as follows:

Fulfillment of the DBE requirement in federally-funded projects as set forth at 49 C.F.R. pt. 23 provides evidence of a public need for the service of Sue Cronin, d/b/a Sue Cronin Trucking, to haul C and D petroleum products from the origin supported in the record for the named accounts supported in the record.

The Board issued a certificate, but it was limited to the accounts of the supporting shippers who testified at the hearing, and restricted as follows:

All service restricted to DBE (Disadvantaged Business Enterprise) projects,

In its memorandum, the Board expressed its reasoning as follows:

[However,] the board does not agree with the extent of the authority granted by the ALJ. A closed entry transportation system regulated by the state requires the board to balance considerations of need of additional service with a need for additional carriers in the industry. In this case, the only evidence of need and evidence of monopoly relate to the provision of service by a DBE carrier. There is no evidence that there is need for an additional carrier other than a certified DBE carrier who can help shippers in meeting federal requirements. Therefore, the Board believes that the Petitioner's certificate should be limited to DBE contracts only.

In the matter of the Petition of Sue Cronin d/b/a Sue Cronin Trucking TRB Docket No. PC 221 /A-91-438, Order No 1, Order after oral Argument September 16, 1992, P. 3,

In Cronin, along with the usual nonminority-owned petroleum carriers, the Protestants included two other DBE-certified carriers: CSI Trucking and J.D. Donovan. The former had only very limited authority, leaving Donovan as the sole DBE carrier with authority in conflict with Cronin. Both the ALJ and the Board deemed it was not appropriate to permit a monopoly by one DBE carrier. The Board believed that the public would be well served if it had an alternative or additional DBE carrier, It.

In this case, there are no minority-owned courier services with statewide authority. The argument for granting Benco statewide authority is, therefore, stronger than in Cronin from the standpoint of providing shippers with a way to meet their minority business requirements. But as in Cronin, in this case there are a host of nonminority-owned couriers with statewide authority who are able to satisfy a shipper's needs for outstate courier service, except for minority business considerations. Following the precedent established in Cronin, therefore, it is appropriate to limit Benco's statewide authority to accounts with minority set-aside requirements or established minority business use goals. The Administrative Law Judge has no special expertise in defining this limitation. To make such a limitation enforceable, however, it appears that the limitation ought to be expressed in terms of shippers who are legally required to set aside a portion of their purchases for minority-owned businesses or shippers who have adopted a specific written policy governing the use of minority-owned businesses.

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